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Tax Insights

Australia enacts Pillar Two legislation

On 10 December 2024, the legislation implementing the global and domestic minimum tax in Australia received royal assent and on 23 December 2024, the legislative instrument containing the substantive rules was registered by the Treasurer. This cements substantive enactment, a timely milestone for year-end financial reporting.

The Pillar Two legislation comprises the following:

- Taxation (Multinational-Global and Domestic Minimum Tax) Act 2024 (the "GMT Act");
- Taxation (Multinational-Global and Domestic Minimum Tax) Imposition Act 2024 (the "Imposition Act"); and
- Treasury Laws Amendment (Multinational-Global and Domestic Minimum Tax) (Consequential) Act 2024 (the "Consequential Act"); and
- Taxation (Multinational—Global and Domestic Minimum Tax) Rules 2024 (the "GloBE Rules").

The primary legislation has undergone changes as a result of Senate amendments since the draft bills were first introduced in July (see Pillar Two primary legislation bills introduced) and the subordinate legislation (i.e. the Rules) has also been revised since its exposure draft last released in March 2024 (see Pillar Two exposure draft legislation released). This article provides a summary of the amendments since these previous releases.

In broad terms, the Australian Pillar Two rules very closely follow the OECD model rules and commentary. Section 3 of the GMT Act ensures that the legislation is interpreted consistently with all current and future Agreed Administrative Guidance, meaning that Australian taxpayers can expect a uniform application of the common approach to Pillar Two.

Notably the legislative framework effectively allows the Australian rules to incorporate administrative and interpretative instructions developed through the OECD guidance that have been issued since the OECD model rules were first released in 2021, including the recent clarifications relating to the transitional CbCR safe harbour, blended CFC tax regimes (such as the US GILTI regime) and the allocation of cross border taxes and the treatment of securitisation vehicles, as well as guidance that will be released by the OECD in future. As the Pillar Two environment continues to evolve and technical interpretation issues raise to the surface, this will be of great value to Australian taxpayers seeking to rely on OECD agreed administrative guidance.

The Australian rules commenced for income years starting on or after 1 January 2024 for the income inclusion rule (**IIR**) and domestic minimum tax (**DMT**), while the undertaxed profits rule (**UTPR**) will commence for income years starting on or after 1 January 2025. Challenges surrounding the gathering of corporate information and financial data and understanding the adjustments to that data required by the new rules will remain to be the key focus area for most taxpayers throughout the initial stages of implementation. The Pillar Two rules impose a new framework for taxation and transactions that have historically been tax exempt may need to be closely reviewed.

The new filing obligations related to Pillar Two include the GloBE Information Return (**GIR**) as well as the Australian IIR/UTPR return and the Australian DMT return. The Australian returns are currently being designed by the Australian Taxation Office (**ATO**) and are expected to form a single filing and require information that is supplementary to the GIR. The due date for the first filing of the Australian returns aligns with the GIR, being 18 months after the end of the first year and 15 months thereafter (i.e., first potential filings due 30 June 2026 for 31 December year-ends). A GIR will generally not need to be filed in Australia if it is filed in another jurisdiction, subject to meeting certain requirements. In these circumstances, a notification will need to be provided to the ATO by the due date of the GIR, containing information on the identity of the filing entity and the jurisdiction.

The legislation does not include any additional Australian registration requirements for in-scope Australian entities. The Consequential Act does however include the requisite filings within the scope of the penalty provisions and it will be important for Australian taxpayers to therefore have robust and tested processes in place well in advance of the first filing deadline to ensure appropriate compliance with the new legislation.

The ATO has been actively engaging with impacted multinationals and advisers and has established a working group to help multinationals navigate implementation. This welcome support should be well utilised by groups looking to better understand how the complex rules will apply in their circumstances.

Summary of amendments since July (primary legislation) and March (subordinate legislation):

Amendment	Bill / exposure draft	Final legislation
Securitization entities	The Consequential Bill contained provision for joint and several liability for top-up taxes amongst all group entities, which was identified as an issue for the purposes of securitization vehicles which may be unable to be quarantined from such risks.	Section 128-30 was amended to exclude a GloBE Excluded Entity from the meaning of a group entity for the purposes of division 128 of the Taxation Administration Act 1953 Schedule 1, Part 3-18. Section 128-35 was also added to clarify that the joint and several liability provision excludes a GloBE securitization entity. New definitions were included in the GloBE Rules to cover securitization entities, aligning with the OECD guidance released in June 2024 and excluding them from the DMT, unless all the Australian constituent

		entities are securitization entities. The definition of a securitization entity aligns with the meaning in section 820-39 of the Income Tax Assessment Act 1997.
Accounts used for domestic minimum tax ("DMT") purposes	Former section 2-35 of the GloBE Rules required the use of accounts prepared in accordance with the local accounting standard to be used for the purposes of computing the DMT, subject to certain conditions as prescribed in OECD guidance. This introduced complexity particularly for foreign headquartered groups and a potential for disparate outcomes as a result of the conditions.	This section has been removed from the Rules and the computation of the DMT should therefore revert to the accounts prepared in accordance with the ultimate parent entity's (**UPE**) group accounting standards. This will be a welcome change for Australian subsidiaries of foreign groups and should enable the DMT calculations to be centralized and aligned with work undertaken at a global group level.
Tax consolidated groups and multiple entry consolidated (MEC) groups	The March draft bills contained the concept of a 'GloBE consolidated group' which was removed in the July bills, leaving a question as to how the GloBE calculations and allocation of top-up tax, which are entity based, should be applied in the context of Australian tax consolidated groups.	New sections 2-40 and 2-50 of the GloBE Rules provide a special mechanism to impose the liability for a DMT or UTPR top-up tax on the head company of a tax consolidated group or MEC group, and remove the obligation from the subsidiary members. This will be a welcome clarification for Australian consolidated taxpayers and is accompanied by confirmation in the Explanatory Statement that an election is available to report the DMT on an aggregated basis such that a tax consolidated group or MEC group can file as if it is a single entity.
UTPR rules	The exposure draft of the GloBE Rules contained a placeholder for the UTPR only. The UTPR has a one year delay in commencement and will apply from income years beginning on or after 1 January 2025.	Part 2-5 of the GloBE Rules contains the provisions for calculating the UTPR top-up tax amount which aligns with the OECD Model rules. The collection mechanism for the UTPR top-up tax is an amount payable (as opposed to denied deductions or a withholding tax mechanism). The Transitional UTPR Safe Harbour is also included in section 8-225 of the GloBE Rules. This provides a deemed zero UTPR top-up tax for low-taxed UPE located entities where the corporate income tax rate in that jurisdiction is at least 20%.

Next steps

The Pillar Two Rules are a major new taxing right applicable to entities operating in Australia that are part of a multinational group with global turnover of Euro 750m and above and should be carefully considered by both Australian and foreign headquartered MNE groups with a presence in Australia. Wholly domestic joint ventures that have at least 50% ownership by an in-scope taxpayer may also be affected.

As the GloBE rules apply to income years commencing on or after 1 January 2024, Australian taxpayers must ensure they understand their compliance requirements including their financial reporting obligations and assess the impact of the rules in Australia. Further OECD guidance is anticipated in 2025 and is expected to focus particularly on planning undertaken in light of Pillar Two, and we recommend close scrutiny of any transactions or restructures through the new Pillar Two lens.

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